

If maintenance agreements or warranties are sold separately from tangible personal property, the sales of those agreements are not taxable transactions. However, when maintenance services or parts are provided under those maintenance agreements, the repair or service providers will be acting as service providers under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.301. (This is a PLR.)

February 24, 1999

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your representative's letter of January 28, 1998. Review of that request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in the request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter, you have stated and made inquiry as follows:

We are writing to request a private letter ruling on a sales tax issue on behalf of:

NAME/ADDRESS

A power of attorney authorizing us to act on their behalf is enclosed.

All correspondence and questions relating to this issue should be sent to:

NAME/ADDRESS

- I) COMPANY sells appliance warranty contracts. Covered appliances include furnaces, air conditioners, dishwashers, refrigerators, washers and dryers. COMPANY warrants that they will fix or replace any malfunctioning appliance for a period of one year. There is a deductible due on each service call. The minimum deductible is \$50; the maximum is \$100.

The type of work being performed under the warranties includes visual inspection and advice, repair work (including labor and parts), appliance replacement when covered by the warranty and optional appliance replacement (where the customer pays the deductible and the excess of the amount billed for the appliance over the cost of just repairing the appliance).

COMPANY does not sell the appliances covered, just the optional warranties.

COMPANY wants to determine the correct way to handle sales and use tax on the above described transactions. See section V for a discussion of the issues involved.

At this time, COMPANY and BUSINESS are the only interested parties that we are aware of.

- II) A copy of a sample warranty agreement is enclosed.
- III) COMPANY recently began business. This request relates to all of their tax periods. COMPANY is not currently under audit on this or on any other issue, nor is there any litigation pending with the Illinois Department of Revenue, or with any other agency.
- IV) To the best of COMPANY and BUSINESS knowledge, the Department has not previously ruled on this issue or on any similar issue. Neither the taxpayer nor BUSINESS has previously submitted and withdrawn a request for a ruling on this or on any similar issue.
- V) Following is a discussion on the issues on which COMPANY is requesting a ruling. Each issue is listed, followed by COMPANY's conclusion and the basis for the conclusion:

Are the sale of the warranty contracts exempt from Illinois sales tax?

COMPANY believes that the sale of the warranty contracts is exempt from Illinois Retailer's Occupation Tax and from Illinois Use Tax. The Administrative Rule published February 1, 1991 states that beginning January 1, 1991 sales and service taxes are no longer to be imposed on 50% of the selling price of maintenance agreements or extended warranty contracts.

Should COMPANY assess their customers sales or service taxes on the deductible charged when a service person makes an inspection or gives advice to a warranty customer?

Since Illinois does not impose sales or service taxes on labor delivered in conjunction with a service, COMPANY believes no tax should be imposed in this situation.

Should COMPANY assess their customers sales or service taxes on the deductible charges for labor and parts when a service person repairs an appliance under the warranty?

COMPANY has been following Illinois Statutes 35 ILCS 120/2-55 and 105/3-75 and Regulation Section 140.301 which state that sales or service taxes should not be charged the customer on these types of transactions. Instead COMPANY has been paying sales or use tax on the cost price of tangible personal property transferred incident to the completion of the maintenance agreement.

Should COMPANY assess their customers sales tax on appliances replaced at no cost, except for the deductible?

COMPANY has been following Illinois Statutes 35 ILCS 120/2-55 and 105/3-75 and Regulation Section 140.301 which state that sales or service taxes should not be charged the customer on these types of transactions. Instead COMPANY has been paying sales or use tax on the cost price of tangible personal property transferred incident to the completion of the maintenance agreement.

When COMPANY replaces an appliance under the optional appliance replacement provisions of the contracts they charge their customers the deductible plus the excess of the cost of the new appliance over what the cost would have been if they had just repaired the old appliance. Should COMPANY assess any sales tax in this situation?

COMPANY believes that sales tax should be collected on the amount billed the customer for the new appliance. COMPANY would purchase the appliance exempt from sales tax as a sale for resale (Ill. Regulation 130.205). COMPANY would pay sales or use tax on any parts or materials transferred by COMPANY without charge to the customer, see above issues and cites.

Copies of the above cites are enclosed.

- VI) Neither COMPANY nor the petitioner is aware of any contrary authority to the above. COMPANY is requesting the ruling because they cannot find where the code addresses how maintenance agreements that charge a deductible should be handled.
- VII) There is no specific trade secrets that need to be deleted from this request before the ruling is made public.
- VIII) This private letter ruling request is made January 28, 1998. A power of attorney signed by the COMPANY is enclosed.

If the charges for maintenance agreements or warranties are included in the selling price of tangible personal property, those charges are part of the gross receipts of the retail transactions and are subject to Retailers' Occupation Tax. See the enclosed copy of 86 Ill. Adm. Code 130.450. No tax is incurred on the maintenance services or parts when the repair or servicing is completed. If deductibles or similar payments are charged to the purchasers under the terms of such agreements, the deductibles or similar payments are not treated as separate taxable transactions and are also not subject to tax.

If maintenance agreements or warranties are sold separately from tangible personal property, the sales of those agreements are not taxable transactions. However, when maintenance services or parts are provided under those maintenance agreements, the repair or service providers will be acting as service providers under the Service Occupation Tax Act. The Service Occupation Tax Act provides that when service providers enter into agreements to provide maintenance services for a particular piece of equipment for a stated period of time at a predetermined fee, the service providers incur Use Tax based upon their cost price of tangible personal property transferred to their customers

incident to the completion of the maintenance services. See 86 Ill. Adm. Code 140.301, enclosed. The purchaser of the separate agreement or warranty is not charged tax on the labor or tangible personal property that is transferred incident to the completion of the maintenance agreement. If a deductible is charged to the purchaser under the terms of the separate agreement, the deductible is also not subject to tax.

If the service provider purchases tangible personal property from an Illinois retailer, he should remit Use Tax to the retailer. The retailer may seek reimbursement from the service provider for local taxes incurred on the transaction. If the service provider acquires the tangible personal property from a supplier not registered to collect Illinois tax, the service provider must self-assess and remit the tax directly to the Department. If servicemen have acquired the tangible personal property outside of Illinois and have already paid a tax in regard to the sale, purchase or use of such property, they may take a credit against their Illinois Use Tax liability for the amount of tax properly due and paid to the other state. See 86 Ill. Adm. Code 150.310(a)(3), enclosed.

After reviewing the "PRODUCT" it appears that such warranty plan is not included as part of the selling price of tangible personal property, but is sold as a separate agreement for the predetermined fee of \$350 and therefore is not subject to Retailers' Occupation Tax. However, as a serviceman under the Service Occupation Tax Act, COMPANY, incurs Use Tax based upon its cost price of tangible personal property, such as repair parts and replacement equipment, that is transferred incident to the completion of the warranty plan.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

George Sorensen
Associate Chief Counsel
Sales and Excise Taxes

GS:GR:msk
Enc.